



IT IS ORDERED

Date Entered on Docket: January 27, 2015

The Honorable Robert H Jacobvitz
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FRED DALE VAN WINKLE,

Debtor.

No. 13-11743-j7

**STIPULATED ORDER RESOLVING MOTION TO AVOID
JUDICIAL LIEN OF BELLEVIEW VALLEY LAND CO., JOHN WILLIAMS
AND ELLEN B. WILLIAMS**

THIS MATTER having come before the Court on Debtor's Motion to Avoid Judicial Lien of Belleview Valley Land Co., John Williams and Ellen B. Williams (hereinafter collectively referred to as "Creditors") filed on September 23, 2013 as docket entry #23, the notice having being sent to Creditors and other parties of interest on September 23, 2013 as indicated by the Notice filed on September 23, 2013 as docket entry #24, and the deadline to respond to the Motion having passed, one objection having been timely made by Creditors on October 8, 2013 as docket entry #30, and the parties having reached an agreement regarding the issues herein, the Court finds as follows:

1. Debtor commenced this case on May 21, 2013 by filing a voluntary petition for relief under Chapter 7 of Title 11 of the United States Bankruptcy Code.

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TO AVOID JUDICIAL LIEN

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2. Debtor scheduled the Creditors in his bankruptcy schedules as secured creditors holding a Judgment Lien in schedule D.
3. The Debtor also scheduled certain real estate in Schedule A described as a Condominium located at 702 White Mountain, #11, Ruidoso, NM 88355 (hereinafter referred to as "Property").
4. The Debtor exempted his equity in the Property on Schedule C in the amount of \$60,000.00 pursuant to the New Mexico Homestead Exemption, NMSA 1978 §42-10-9 (Cum.Supp.2012).
5. The Creditors disputed that Debtor was entitled to the Homestead Exemption since he had become deceased after the filing of the bankruptcy petition. The Court subsequently ordered, "the exemption in the Homestead Property in the amount of \$60,000 is allowed." Order Regarding Motion to Avoid Judicial Lien and Setting Scheduling Conference, November 14, 2014, Docket Entry #45.
6. The parties have agreed that the Property shall be valued at \$100,000 for purposes of determining the extent of Creditors' judicial lien.
7. Creditors filed a transcript of judgment against the Debtor in the Lincoln County real estate records on or about August 17, 2013 as Instrument #201005126. (See Exhibit "A" attached).
8. There exists a consensual First Mortgage on the Property which was held by First National Bank at the time the petition was filed. Creditors have since purchased the First Mortgage and are the owners thereof. The amount of the payoff of the First Mortgage has not been determined as of the date of entry of this Order.
9. The Creditors' judicial lien impairs the Debtor's homestead exemption and should be partially avoided pursuant to 11 U.S.C. §522(f)(2)(A).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

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1. The transcript of judgment lien of Creditors attached as Exhibit "A" hereto is hereby partially avoided and attaches only to the extent of any value over and above the stipulated value of the Property (\$100,000) less the payoff of the First Mortgage less the Debtor's allowed Homestead Exemption (\$60,000).
2. When the amount of the payoff of the First Mortgage is known, the Court will enter a further order establishing the exact amount of the Creditors' judicial lien that can be applied against the Property.

****END OF ORDER****

Submitted by:

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s/submitted electronically 1.22.15
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Approved via email 1.22.15
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**TWELFTH JUDICIAL DISTRICT COURT
COUNTY OF OTERO
STATE OF NEW MEXICO**

CLERK OF DISTRICT COURT OF
OTERO COUNTY, N.M.
2010 AUG 17 PM 1:25
JAN PERRY

TRANSCRIPT OF JUDGMENT

CLERK BY

CASE NUMBER: CV-2008-76 DIV. II

NATURE OF ACTION: Counterclaim for Violation of Subdivision Act

JUDGMENT CREDITORS: Belleview Valley Land Co., John Williams and Ellen Bl. Williams

JUDGMENT DEBTOR: FRED VAN WINKLE

AMOUNT OF JUDGMENT

DAMAGES	COSTS	TOTAL	RATE OF INTEREST
\$234,944.31 plus Attorney Fees to be determined by the Court.	\$640.99	\$235,585.30 + costs plus Attorney Fees to be determined by the Court.	8.75% per annum calculated from July 23, 2010.

DATE OF JUDGMENT:

HOW SATISFIED & REMARKS

August 13, 2010	
ATTORNEY FOR JUDGMENT	
CREDITOR:	
W. T. Martin, Jr. Martin, Dugan & Martin 509 W. Pierce St. P.O. Box 2168 Carlsbad, NM 88221-2168 (575) 887-3528 Fax (575) 887-2136	

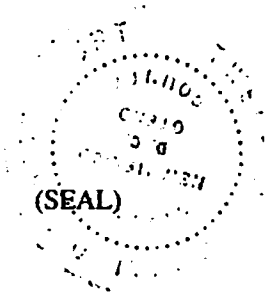
LINCOLN COUNTY-NM
MINA R HIRSH, CLERK
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BY HIRSH

EXHIBIT

D

I, Jan Perry, Clerk of the District Court of the Twelfth Judicial District of the State of New Mexico, within and for the County of Otero, do hereby certify the foregoing to be a true transcript of the judgment of said Court, now of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and Seal of said Court this 17 day of August, 2010.



JAN PERRY
CLERK OF THE DISTRICT COURT

By: [Signature]
Deputy

LINCOLN COUNTY-NM
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